

110TH CONGRESS  
2D SESSION

# H. R. 2537

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IN THE SENATE OF THE UNITED STATES

APRIL 17, 2008

Received; read twice and referred to the Committee on Environment and  
Public Works

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## AN ACT

To amend the Federal Water Pollution Control Act relating  
to beach monitoring, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Beach Protection Act  
3 of 2008”.

4 **SEC. 2. WATER POLLUTION SOURCE IDENTIFICATION.**

5       (a) SOURCE TRACKING.—Section 406(b) of the Fed-  
6 eral Water Pollution Control Act (33 U.S.C. 1346(b)) is  
7 amended—

8           (1) by redesignating paragraphs (3) and (4) as  
9 paragraphs (4) and (5), respectively; and

10          (2) by inserting after paragraph (2) the fol-  
11 lowing:

12           “(3) SOURCE IDENTIFICATION PROGRAMS.—In  
13 carrying out a monitoring and notification program,  
14 a State or local government may develop and imple-  
15 ment a coastal recreation waters pollution source  
16 identification and tracking program for coastal  
17 recreation waters adjacent to beaches or similar  
18 points of access that are used by the public and are  
19 not meeting applicable water quality standards for  
20 pathogens and pathogen indicators. If, in carrying  
21 out such source identification and tracking program,  
22 a source of pathogenic contamination is identified by  
23 such State or local government, such State or local  
24 government shall make information on the existence  
25 of such source available to the public on the Internet

1 within 24 hours of the identification of such  
2 source.”.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—Section  
4 406(i) of such Act (33 U.S.C. 1346(i)) is amended by  
5 striking “\$30,000,000 for each of fiscal years 2001  
6 through 2005” and inserting “\$40,000,000 for each of fis-  
7 cal years 2008 through 2012”.

8 (c) PROHIBITION ON EARMARKS.—None of the funds  
9 appropriated pursuant to section 406(i) of such Act (33  
10 U.S.C. 1346(i)) may be used for a Congressional earmark  
11 as defined in clause 9(d) of rule XXI of the Rules of the  
12 House of Representatives.

13 **SEC. 3. FUNDING FOR BEACHES ENVIRONMENTAL ASSESS-**  
14 **MENT AND COASTAL HEALTH ACT.**

15 Section 8 of the Beaches Environmental Assessment  
16 and Coastal Health Act of 2000 (114 Stat. 877) is amend-  
17 ed by striking “2005” and inserting “2012”.

18 **SEC. 4. STATE REPORTS.**

19 Section 406(b)(4)(A)(ii) of the Federal Water Pollu-  
20 tion Control Act (as redesignated by section (2)(a)(1) of  
21 this Act) is amended by inserting “and all environmental  
22 agencies of the State with authority to prevent or treat  
23 sources of pollution in coastal recreation waters” after  
24 “public”.

1 **SEC. 5. USE OF RAPID TESTING METHODS.**

2 (a) CONTENTS OF STATE AND LOCAL GOVERNMENT  
3 PROGRAMS.—Section 406(c)(4)(A) of the Federal Water  
4 Pollution Control Act (33 U.S.C. 1346(c)(4)(A)) is  
5 amended by inserting “, including rapid testing methods,”  
6 after “methods”.

7 (b) REVISED CRITERIA.—Section 304(a)(9)(A) of  
8 such Act (33 U.S.C. 1314(a)(9)(A)) is amended by insert-  
9 ing “and rapid testing methods” after “methods”.

10 (c) VALIDATION AND USE OF RAPID TESTING METH-  
11 ODS.—

12 (1) VALIDATION OF RAPID TESTING METH-  
13 ODS.—Not later than October 1, 2010, the Adminis-  
14 trator of the Environmental Protection Agency shall  
15 complete an evaluation and validation of a rapid  
16 testing method for the water quality criteria and  
17 standards for pathogens and pathogen indicators de-  
18 scribed in section 303(i)(1)(A).

19 (2) GUIDANCE FOR USE OF RAPID TESTING  
20 METHODS.—

21 (A) IN GENERAL.—Not later than 180  
22 days after completion of the validation under  
23 paragraph (1), and after providing notice and  
24 an opportunity for public comment, the Admin-  
25 istrator shall publish guidance for the use at  
26 coastal recreation waters adjacent to beaches or

1 similar points of access that are used by the  
2 public of rapid testing methods that will en-  
3 hance the protection of public health and safety  
4 through rapid public notification of any exceed-  
5 ing of applicable water quality standards for  
6 pathogens and pathogen indicators.

7 (B) PRIORITIZATION.—In developing such  
8 guidance, the Administrator shall prioritize the  
9 use of rapid testing methods at those beaches  
10 or similar points of access that are the most  
11 used by the public.

12 (d) DEFINITION.—Section 502 of such Act (33  
13 U.S.C. 1362) is amended by adding at the end the fol-  
14 lowing:

15 “(25) RAPID TESTING METHOD.—The term  
16 ‘rapid testing method’ means a method of testing  
17 the water quality of coastal recreation waters for  
18 which results are available as soon as practicable  
19 and not more than 6 hours after a water quality  
20 sample is received by the testing facility.”.

21 **SEC. 6. NOTIFICATION OF FEDERAL, STATE, AND LOCAL**  
22 **AGENCIES.**

23 Section 406(c)(5) of the Federal Water Pollution  
24 Control Act (33 U.S.C. 1346(c)(5)) is amended—

(1) by striking “prompt communication” and inserting “communication, within 24 hours of the receipt of the results of a water quality sample,”;

(2) in subparagraph (A)—

(A) by inserting “(i) in the case of any State in which the Administrator is administering the program under section 402,” before “the Administrator” the first place it appears; and

(B) by inserting at the end the following:

“(ii) in the case of any State other than a State to which clause (i) applies, all agencies of the State government with authority to require the prevention or treatment of the sources of coastal recreation water pollution; and”;

(3) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(4) by inserting after paragraph (5) the following:

“(6) measures for an annual report to the Administrator, in such form as the Administrator determines appropriate, on the occurrence, nature, location, pollutants involved, and extent of any exceeding of applicable water quality standards for pathogens and pathogen indicators;”.

1 **SEC. 7. CONTENT OF STATE AND LOCAL PROGRAMS.**

2 Section 406(c) of the Federal Water Pollution Con-  
3 trol Act (33 U.S.C. 1346(c)) is amended—

4 (1) by striking “and” at the end of paragraph  
5 (7) (as redesignated by section 6(3) of this Act);

6 (2) by striking the period at the end of para-  
7 graph (8) (as redesignated by section 6(3) of this  
8 Act) and inserting a semicolon; and

9 (3) by adding at the end the following:

10 “(9) the availability of a geographic information  
11 system database that such State or local government  
12 program shall use to inform the public about coastal  
13 recreation waters and that—

14 “(A) is publicly accessible and searchable  
15 on the Internet;

16 “(B) is organized by beach or similar point  
17 of access;

18 “(C) identifies applicable water quality  
19 standards, monitoring protocols, sampling plans  
20 and results, and the number and cause of coast-  
21 al recreation water closures and advisory days;  
22 and

23 “(D) is updated within 24 hours of the  
24 availability of revised information;

25 “(10) measures for the immediate posting of  
26 signs at beaches or similar points of access that are

1 sufficient to give public notice following the results  
2 of any water quality sample that demonstrates an  
3 exceeding of applicable water quality standards for  
4 pathogens and pathogen indicators for the coastal  
5 recreation waters adjacent to such beaches or similar  
6 points of access; and

7 “(11) measures to ensure that closures or  
8 advisories are made or issued within 24 hours after  
9 the State government determines that any coastal  
10 recreation waters in the State are not meeting or are  
11 not expected to meet applicable water quality stand-  
12 ards for pathogens and pathogen indicators.”.

13 **SEC. 8. COMPLIANCE REVIEW.**

14 Section 406(h) of the Federal Water Pollution Con-  
15 trol Act (33 U.S.C. 1346(h)) is amended—

16 (1) by redesignating paragraphs (1) and (2) as  
17 subparagraphs (A) and (B), respectively;

18 (2) by moving such subparagraphs 2 ems to the  
19 right;

20 (3) by striking “In the” and inserting the fol-  
21 lowing:

22 “(1) IN GENERAL.—In the”; and

23 (4) by adding at the end the following:

24 “(2) COMPLIANCE REVIEW.—On or before July  
25 31 of each calendar year beginning after the date of



1 enactment of this paragraph, the Administrator  
2 shall—

3 “(A) prepare a written assessment of com-  
4 pliance with all statutory and regulatory re-  
5 quirements of this section for each State and  
6 local government and of compliance with condi-  
7 tions of each grant made under this section to  
8 a State or local government;

9 “(B) notify the State or local government  
10 of such assessment; and

11 “(C) make each of the assessments avail-  
12 able to the public in a searchable database on  
13 the Internet on or before December 31 of such  
14 calendar year.

15 “(3) CORRECTIVE ACTION.—If a State or local  
16 government that the Administrator notifies under  
17 paragraph (2) is not in compliance with any require-  
18 ment or grant condition described in paragraph (2)  
19 fails to take such action as may be necessary to  
20 comply with such requirement or condition within  
21 one year of the date of notification, any grants made  
22 under subsection (b) to the State or local govern-  
23 ment, after the last day of such one-year period and  
24 while the State or local government is not in compli-  
25 ance with all requirements and grant conditions de-

1 scribed in paragraph (2), shall have a Federal share  
2 of not to exceed 50 percent.

3 “(4) GAO REVIEW.—Not later than December  
4 31 of the third calendar year beginning after the  
5 date of enactment of this paragraph, the Comp-  
6 troller General shall conduct a review of the activi-  
7 ties of the Administrator under paragraphs (2) and  
8 (3) during the first and second calendar years begin-  
9 ning after such date of enactment and submit to  
10 Congress a report on the results of such review.”.

11 **SEC. 9. STUDY OF GRANT DISTRIBUTION FORMULA.**

12 (a) STUDY.—Not later than 30 days after the date  
13 of enactment of this Act, the Administrator of the Envi-  
14 ronmental Protection Agency shall commence a study of  
15 the formula for the distribution of grants under section  
16 406 of the Federal Water Pollution Control Act (33  
17 U.S.C. 1346) for the purpose of identifying potential revi-  
18 sions of such formula.

19 (b) CONTENTS.—In conducting the study, the Ad-  
20 ministrator shall consider the base cost to States of devel-  
21 oping and maintaining water quality monitoring and noti-  
22 fication programs, the States’ varied beach monitoring  
23 and notification needs, including beach mileage, beach  
24 usage, and length of beach season, and other factors that  
25 the Administrator determines to be appropriate.

1 (c) CONSULTATION.—In conducting the study, the  
2 Administrator shall consult with appropriate Federal,  
3 State, and local agencies.

4 (d) REPORT.—Not later than 12 months after the  
5 date of enactment of this Act, the Administrator shall sub-  
6 mit to the Committee on Transportation and Infrastruc-  
7 ture of the House of Representatives and the Committee  
8 on Environment and Public Works of the Senate a report  
9 on the results of the study, including any recommendation  
10 for revision of the distribution formula referred to in sub-  
11 section (a).

12 **SEC. 10. PUBLICATION OF COASTAL RECREATION WATERS**  
13 **PATHOGEN LIST.**

14 Section 304(a)(9) of the Federal Water Pollution  
15 Control Act (33 U.S.C. 1314(a)(9)) is amended by adding  
16 at the end the following:

17 “(C) PUBLICATION OF PATHOGEN AND  
18 PATHOGEN INDICATOR LIST.—Upon publication  
19 of the new or revised water quality criteria  
20 under subparagraph (A), the Administrator  
21 shall publish in the Federal Register a list of all  
22 pathogens and pathogen indicators studied  
23 under section 104(v).”.

1 **SEC. 11. ADOPTION OF NEW OR REVISED CRITERIA AND**  
2 **STANDARDS.**

3 Section 303(i)(2)(A) of the Federal Water Pollution  
4 Control Act (33 U.S.C. 1313(i)(2)(A)) is amended by  
5 striking “paragraph (1)(A)” each place it appears and in-  
6 serting “paragraph (1)”.

7 **SEC. 12. USE OF MOLECULAR DIAGNOSTICS FOR MONI-**  
8 **TORING AND ASSESSING COASTAL RECRE-**  
9 **ATION WATERS.**

10 (a) STUDY.—The Administrator of the Environ-  
11 mental Protection Agency shall conduct a study to assess  
12 the benefits of using molecular diagnostics for monitoring  
13 and assessing the quality of coastal recreation waters adja-  
14 cent to beaches and similar points of access that are used  
15 by the public.

16 (b) CONTENTS.—In conducting the study, the Ad-  
17 ministrator shall—

18 (1) to the extent practicable, evaluate the full  
19 range of available rapid testing methods, as defined  
20 by section 502 of the Federal Water Pollution Con-  
21 trol Act (33 U.S.C. 1362), and methods that meet  
22 prescribed performance standards, including—

23 (A) the amplified nucleic acid assay meth-  
24 od; and

25 (B) the indicator organisms enterococci  
26 and *E. coli*; and

1           (2) compare the use of molecular diagnostics to  
2           culture testing of same source water, including the  
3           time for obtaining results, accuracy of results, and  
4           future applicability.

5           (c) PARTNERSHIPS.—Notwithstanding chapter 63 of  
6           title 31, United States Code, the Administrator may  
7           award a grant or cooperative agreement to a public or pri-  
8           vate organization to assist the Administrator in carrying  
9           out the study.

10          (d) REPORT TO CONGRESS.—Not later than 2 years  
11          after the date of enactment of this Act, the Administrator  
12          shall transmit to Congress a report on the results of the  
13          study.

14          (e) AUTHORIZATION OF APPROPRIATIONS.—There  
15          are authorized to be appropriated such sums as may be  
16          necessary to carry out this section.

17       **SEC. 13. MONITORING PROTOCOL FOR MERCURY.**

18          (a) REVIEW AND UPDATE OF EXISTING MONITORING  
19          PROTOCOLS.—The Administrator of the Environmental  
20          Protection Agency shall review and update existing moni-  
21          toring protocols as necessary for mercury affecting the  
22          coastal recreation waters of the Great Lakes.

23          (b) RECOMMENDATIONS ON TESTING.—In carrying  
24          out subsection (a), the Administrator shall develop up-  
25          dated recommendations on testing for the presence of mer-

1 cury affecting the coastal recreation waters of the Great  
 2 Lakes, including the presence of mercury in Great Lakes  
 3 sediment and fish tissue.

4 (c) PUBLICATION OF WATER QUALITY CRITERIA.—  
 5 Nothing in this section shall delay the schedule for publi-  
 6 cation of new or revised water quality criteria as required  
 7 by section 304(a)(9) of the Federal Water Pollution Con-  
 8 trol Act (33 U.S.C. 1314(a)(9)).

9 (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
 10 authorized to be appropriated such sums as may be nec-  
 11 essary to carry out this section.

#### 12 **SEC. 14. NATIONAL LIST OF BEACHES.**

13 Section 406(g)(3) of the Federal Water Pollution  
 14 Control Act (33 U.S.C. 1346(g)(3)) is amended by strik-  
 15 ing “The Administrator” and all that follows through the  
 16 period and inserting “Within 12 months after the date of  
 17 the enactment of the Beach Protection Act of 2008, and  
 18 biennially thereafter, the Administrator shall update the  
 19 list described in paragraph (1).”.

#### 20 **SEC. 15. IMPACT OF CLIMATE CHANGE ON POLLUTION OF** 21 **COASTAL RECREATION WATERS.**

22 (a) STUDY.—The Administrator of the Environ-  
 23 mental Protection Agency shall conduct a study on the  
 24 long-term impact of climate change on pollution of coastal  
 25 recreation waters.

1 (b) REPORT.—

2 (1) IN GENERAL.—Not later than one year  
3 after the date of enactment of this Act, the Adminis-  
4 trator shall submit to Congress a report on the re-  
5 sults of the study conducted under subsection (a).

6 (2) INFORMATION ON POTENTIAL CONTAMI-  
7 NANT IMPACTS.—The report shall include informa-  
8 tion on potential contaminant impacts on ground  
9 and surface water resources as well as ecosystem  
10 and public health in coastal communities.

11 (3) MONITORING.—The report shall address  
12 monitoring required to document and assess chang-  
13 ing conditions of coastal water resources, rec-  
14 reational waters, and ecosystems and review the cur-  
15 rent ability to assess and forecast impacts associated  
16 with long-term change.

17 (4) FEDERAL ACTIONS.—The report shall high-  
18 light necessary Federal actions to help advance the  
19 availability of information and tools to assess and  
20 mitigate these effects in order to protect public and  
21 ecosystem health.

22 (5) CONSULTATION.—In developing the report,  
23 the Administrator shall work in consultation with  
24 agencies active in the development of the National  
25 Water Quality Monitoring Network and the imple-

- 1       mentation of the Ocean Research Priorities Plan and
- 2       Implementation Strategy.

Passed the House of Representatives April 16, 2008.

Attest:                   LORRAINE C. MILLER,  
*Clerk.*